

REMARKS

I. Summary of Office Action and Applicants' Reply

Claims 1, 8, 46-51, 53-67, 69-76, 78, 80-88, and 90-123 were pending in the above-identified patent application. Of those, claims 1, 8, 72-76, 78, 80, 81, 104-117, and 122 have been withdrawn from further consideration as being drawn to a non-elected invention.

Claims 46-51, 53-67, 69-71, 82-88, 90-103, 118-121, and 123 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,790,642 to Taylor et al. ("Taylor").

The claim rejections are respectfully traversed.

II. The Claim Rejections

All of the claims—-independent claims 46, 53, 63, 82, and 88 and their respective dependent claims—have been rejected under section 103 as being unpatentable over Taylor. Applicants believe that the arguments set forth in the December 22, 2006 Reply to Office Action ("the previous Reply") adequately explain the differences between the pending claims and Taylor. However, applicants provide additional arguments below to further demonstrate that the claims are patentable over Taylor.

As set forth in the previous Reply, Taylor discloses a system in which a plurality of service centers in a telecommunications network such as the public switched telephone system competitively bid for the rights to service a particular call. (Taylor, Abstract). An originating service center receives a request via the public switched telephone network or any other communication path to transmit facsimile information to a specified telephone number. (Taylor, col. 7, ll. 51-57). The originating service center assembles a bid request and transmits the bid

request to bidding service centers. (Taylor, col. 7, ll. 58-67). Each service center includes a costing algorithm which parses the information in the bid request and determines the cost to complete the call. (Taylor, col. 5, ll. 5-11). The calculated cost information (i.e., bids) is transmitted from the bidding service centers back to the originating service center. (Taylor, col. 5, ll. 12-17). The originating service center compares the bids and selects the lowest bidding service center to make the call. (Taylor, col. 5, ll. 18-20). An instruction, or “contract” to make the call is sent to the lowest bidder. The information required, including any facsimile data to be transmitted, is sent to the lowest cost center, and the call is completed via the portion of the public switched telephone network associated with the lowest cost service center. (Taylor, col. 5, ll. 21-26).

Independent claim 46 recites a method for creating a bidding process among telecommunication Providers. The method includes, in a moderating computer, “receiving bids to provide telecommunication service . . . , processing the bids to produce processed bid data, and storing the bids and the processed bid data in a database of the moderating computer as first bidding data.” The method further includes, in the moderating computer, “transmitting at least a portion of the first bidding data to at least a portion of the at least two telecommunication Providers.” Thus, the claimed method advantageously provides bidding data to a bidding telecommunication Provider, so that the Provider could, for example, adjust its own bid in view of another Provider’s bid.

In sharp contrast to independent claim 46, Taylor fails to teach or suggest at least the transmission of “bidding data” to at least two telecommunication Providers as claimed. Notably, the Office Action fails to provide a citation to Taylor to establish that this claimed feature is allegedly shown or suggested by Taylor, and for good reason. The bidding service centers

described in Taylor are not provided with any “bidding data” at all thereby making it impossible for them to adjust their bids in view of the bids of other bidding service centers. Rather, Taylor discloses that, after bids are received by an originating service center, the originating service center selects the lowest bidding service center to make the call and sends the information required to the lowest cost service center. Thus, only the originating service center receives bidding data, and not the bidding service centers. In fact, only the lowest bidding service center receives any further information from the originating service center once the bids are received, and this information is not “bidding data” at all but rather it is related to the completion of the call. (*See Taylor*, col. 5, ll. 21-24).

The Office Action also acknowledges that Taylor fails to teach or suggest “storing the bids and the processed bid data in a database of the moderating computer as first bidding data,” but takes Official Notice that “storing a billing record in a database, and processing said billing record are old and well known billing processes in telecommunication service world.” (Office Action, p. 4). It is unclear how storage of “bidding data” as claimed and storage of a “billing record” as alleged to be old and well known are even similar. However, at the least, the Official Notice as to storing billing records also fails to teach or suggest transmission of “bidding data” to a telecommunication Provider as claimed.

Accordingly, for at least these reasons, Taylor fails to teach or suggest all the features of independent claim 46. Therefore, claim 46 is patentable over Taylor, and the rejection of the claim under section 103 should be withdrawn. In addition, dependent claims 47-51 and 118-119 are allowable at least because independent claim 46 is allowable. Thus, the rejections of dependent claims 47-51 and 118-119 are moot and should also be withdrawn.

Independent claims 53, 63, 82, and 88, and their respective dependent claims, are also patentable over Taylor for similar reasons as independent claim 46 as each of these claims similarly involves providing a telecommunication Provider with data or information related to bids received from other telecommunication Providers. (*See, e.g.*, element (b) of claim 53, element (b) of claim 63, element (c) of claim 82, and element (e) of claim 88). For the reasons set forth above, Taylor neither shows nor suggests at least this aspect of the claimed approaches.

III. Conclusion

Applicants respectfully submit that, as described above, the cited references do not show or suggest the combination of features recited in the claims. Applicants do not concede that the cited references show any of the elements recited in the claims. However, applicants have provided specific examples of elements in the claims that are clearly not present in the cited prior art.

In addition, each of the combinations of limitations recited in the claims includes additional limitations not shown or suggested by the cited references. Therefore, for these reasons as well, applicants respectfully request withdrawal of the rejection.

Applicants strongly emphasize that one reviewing the prosecution history should not interpret any of the examples applicant has described herein in connection with distinguishing over the prior art as limiting to those specific features in isolation. Rather, applicants assert that it is the combination of elements recited in each of the claims, when each claim is interpreted as a whole, which is patentable. Applicants have emphasized certain features in the claims as clearly not present in the cited references, as discussed above. However, applicants do not concede that other features in the claims are found in the prior art. Rather, for the sake of

simplicity, applicants are providing examples of why the claims described above are distinguishable over the cited prior art.

Applicants wish to clarify for the record, if necessary, that the claims have been amended to expedite prosecution. Moreover, applicants reserve the right to pursue the original subject matter recited in the present claims in a continuation application.

Any narrowing amendments made to the claims in the present Amendment are not to be construed as a surrender of any subject matter between the original claims and the present claims; rather merely applicants' best attempt at providing one or more definitions of what applicant believes to be suitable patent protection. In addition, the present claims provide the intended scope of protection that applicants are seeking for this application. Therefore, no estoppel should be presumed, and applicants' claims are intended to include a scope of protection under the Doctrine of Equivalents.

Further, applicants hereby retract any arguments and/or statements made during prosecution that were rejected by the Examiner during prosecution and/or that were unnecessary to obtain allowance, and only maintain the arguments that persuaded the Examiner with respect to the allowability of the patent claims, as one of ordinary skill would understand from a review of the prosecution history. That is, applicants specifically retract statements that one of ordinary skill would recognize from reading the file history were not necessary, not used and/or were rejected by the Examiner in allowing the patent application.

For all the reasons advanced above, applicants respectfully submit that the rejections have been overcome and should be withdrawn.

For all the reasons advanced above, applicants respectfully submit that the Application is in condition for allowance, and that such action is earnestly solicited.


IV. Authorization

The Director is hereby authorized to charge any additional fees which may be required for this Reply, or credit any overpayment, to Deposit Account No. 50-1817.

In the event that an Extension of Time is required, or which may be required in addition to that requested in a petition for an Extension of Time, the Director is requested to grant a petition for that Extension of Time which is required to make this response timely and is hereby authorized to charge any fee for such an Extension of Time or credit any overpayment for an Extension of Time to Deposit Account No. 50-1817.

Respectfully submitted,
Wilmer Cutler Pickering
Hale and Dorr LLP

Date: June 26, 2007



Laura A. Paquette
Registration No. 48,446
Attorney for Applicants

Wilmer Cutler Pickering
Hale and Dorr LLP
Customer No. 28089
399 Park Avenue
New York, New York 10022
Tel: 212-230-8800
Fax: 212-230-8888